



## FISH &amp; NEAVE

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TO	COMPANY/FIRM	RECIPIENT FAX	RECIPIENT PHONE
Albert Zervas, Esq.	Trademark Trial and Appeal Board South Tower Building 2900 Crystal Drive Arlington, VA 22202	703.746.7072	703.308.9330. x188
SENDER	DATE	SENDER'S FAX	SENDER'S PHONE
Martin A. Leroy	February 10, 2003	646.728.2618	212.596.9127
CLIENT	RE:	TIME	PAGES (INCLUDING COVER)
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MESSAGE			

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1251 AVENUE OF THE AMERICAS, NEW YORK, NY 10020 TEL 212.596.9000 FAX 212.596.9099  
525 UNIVERSITY AVENUE, PALO ALTO, CA 94301 TEL 650.617.4000 FAX 650.617.4090  
1825 I STREET NW, SUITE 400, WASHINGTON, DC 20006 TEL 202.857.5222 FAX 202.857.5237



# FISH & NEAVE

Hartmut F. Schwarz  
Eric C. Woglom  
John E. Hulsan  
Robert C. Morgan  
Kenneth B. Herman  
Robert R. Jackson  
Joseph J. Jenner  
W. Edward Bailey  
Patricia A. Martone  
Rodrick R. McKelvie  
James R. Holby, Jr.  
Richard M. Barnes  
Laurence S. Rogers

Vincent N. Polzello  
Robert J. Salzman  
Thomas L. Serres  
Daniel M. Gatz  
Norman H. Boomer  
Kevin J. Cuffigan  
Shawn A. Dusemoun  
Susan Proffitt  
Margaret A. Piam  
Douglas J. Calvert  
Dennis L. Loring  
Jeffrey H. Ingerson  
Mark H. Skonieczny

Jane A. Massaro  
Diana-Clarita Hough  
Mark D. Rowland  
Edward J. DeFranco  
Eric R. Hubbard  
Kasey I. Nix  
William J. McCabe  
Marta E. Gross  
John M. Hinz  
Richard A. Inz  
Frances M. Lyman  
Christopher J. Harman  
A. Jay Arnold

Steven Cherny  
Joseph M. Giuliano  
Jeanne C. Curtis  
Gerald J. Flammann, Jr.  
Kevin P.B. Johnson  
Terrence J. P. Kearney  
Robert W. Morris  
Vincent S. Lela  
Jane T. Summison  
Richard L. Rahney  
James E. Hopensfield  
Pablo D. Hender  
Brian C. Cannon

## Of Counsel

Kenneth A. Genard  
Gene W. Loo

## Senior Attorneys

A. Peter Apur  
Thomas J. Vapor  
Charles Quinn  
Lisa E. Cristol  
Gabrielle E. Higgins

Frederick P. Fish 1855-1930  
Charles Neave 1867-1937

\* Cook County and New York State \*\* California Bar Only \*\*\* Oklahoma Bar Only \*\*\*\* DC Bar Only

## MARTIN A. LEROY

DIRECT DIAL 212.596.9127

DIRECT FAX 646.728.2816

E-MAIL MLEROY@FISHNEAVE.COM

February 10, 2003

## VIA FACSIMILE (CONF. BY FEDERAL EXPRESS)

Albert Zervas, Esq.  
Trademark Trial and Appeal Board  
South Tower Building  
2900 Crystal Drive  
Arlington, VA 22202

Re: *Galleon S.A. v. Havana Club Holding, S.A.*  
TTAB Cancellation No. 24,108

Dear Mr. Zervas:

This is in response to the letter to you from William R. Golden, Jr., counsel for petitioners, dated February 7, 2003, in which Mr. Golden argues that respondent Empresa Cubana Exportadora de Alimentos y Productos Varios, S.A. ("Cubaexport") should not be granted any additional time to respond to petitioner's summary judgment motion in the above-referenced cancellation proceeding.

By order of the Trademark Trial and Appeal Board, dated January 21, 2003, Cubaexport was joined as respondent in the cancellation proceeding. Cubaexport was not a party to the proceeding prior to January 21, was not represented by counsel in connection with this proceeding, and had no reason to be so represented prior to January 21. Subsequent to the Board's Order, Fish & Neave was asked by Cubaexport to represent it as counsel in this proceeding. Fish & Neave immediately applied to OFAC for a specific license pursuant to the

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1825 I STREET, NW, SUITE 400, WASHINGTON DC 20006 TEL 202.857.5222 FAX 202.857.5237

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Cuban Assets Control Regulations to (i) defend Cubaexport in the cancellation proceeding, (ii) solicit and receive fee payments and reimbursements for expenses incurred in connection with Fish & Neave's legal representation of Cubaexport, and (iii) travel to Cuba to meet with Cubaexport in connection with such representation.

Fish & Neave is not in a position to represent Cubaexport in this matter absent the requested OFAC license. Without the specific OFAC license Fish & Neave has sought, this firm cannot be paid for services performed for Cubaexport in connection with this proceeding (see *American Airways Charter v. Reagan*, 746 F.2d 865, 872 (D.C. Cir. 1984)) ("no fee can be paid counsel absent a separate, and express, authorization from OFAC") or travel to Cuba to meet with Cubaexport.<sup>1</sup>

Mr. Golden also incorrectly asserts that Mr. Krinsky of Rabinowitz, Boudin, Standard, Krinsky and Lieberman was identified in the Board's January 21, 2003 Order as Cubaexport's "counsel of record" in this proceeding and that Fish & Neave must (i) take action to be "formally substituted as counsel of record," and (ii) serve a notice of appearance on behalf of Cubaexport. Mr. Golden, however, confuses the concepts of domestic representative with legal counsel in the proceeding. The Board identified Mr. Krinsky as Cubaexport's domestic representative upon whom service of notices or process for this proceeding may be made (see pages 7 and 19 of the Board's January 21, 2003 Order). Mr. Krinsky has not served as Cubaexport's counsel in this proceeding and has not been requested to do so. Therefore, no "substitution" of counsel is possible as Cubaexport has not been represented by any other counsel in this proceeding. Furthermore, there is no requirement that Fish & Neave serve "a notice of appearance" on behalf of Cubaexport in this proceeding.<sup>2</sup>

Mr. Golden also says that Cubaexport has had more than ample time to prepare any response to the petitioners' summary judgment papers. Mr. Golden, however, ignores the fact that Cubaexport has only been a party to this proceeding since January 21, 2003 and that, prior to January 21, had no reason or obligation to retain and pay counsel to defend it in this

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<sup>1</sup> Mr. Golden does not dispute that Cubaexport cannot pay Fish & Neave without the specific license Fish & Neave has sought. Moreover, Mr. Golden is incorrect when he says that Fish & Neave lawyers could travel to Cuba as "fully-hosted" travelers pursuant to 31 C.F.R. § 515.420. That section does not apply because Fish & Neave would be providing a service to a Cuban national in connection with the travel. 31 C.F.R. §§ 515.420(a)(1) and (c).

<sup>2</sup> On February 7, Fish & Neave provided to Mr. Krinsky a copy of our February 5 letter to you.

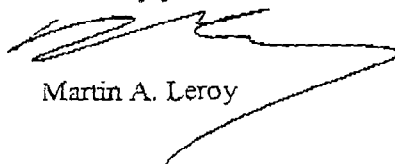
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proceeding. Now that Cubaexport has been joined in the proceeding and has requested Fish & Neave's representation, Fish & Neave requires additional time to become familiar with the extensive history and legal issues in this matter, to meet with our client and to coordinate efforts with counsel for HCH.

Petitioners have not provided a legitimate reason as to why our request for an extension of time in which to respond to petitioners' summary judgment motion should be denied.

Sincerely yours,



Martin A. Leroy

MAL:afg

cc: William Golden, Esq. (Counsel for petitioners) (via facsimile)  
Charles Sims, Esq. (Counsel for respondent) (via facsimile)  
Michael Krinsky, Esq. (via facsimile)